

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1790 OF 2002

Janardan Mitharam Jangale)
Adult, Occ: Service, Residing at)
Adhyapak Ganga Cooperative Housing)
Society Ltd., Teachers' Colony,)
Kurla (W), Mumbai - 400 070.)..Petitioner

Versus

1. The Assistant Registrar,)
Cooperative Societies, F/S Ward)
Mumbai.)
2. The Divisonal Joint Registrar)
Cooperative Societis,)
Mumbai Division, Mumbai.)
3. The Hon'ble Minister for)
Cooperation, State of)
Maharashtra, Mantralaya, Mumbai.)
4. The Secretary, Department)
of Cooperation, Mantralaya,)
Mumbai 400 032.)
5. The State of Maharashtra)

- through Govt. pleader,)
 High Court, Bombay-32.)
6. Shri A.P. Pawar, the Inquiry)
 Officer appointed by the)
 Respondent No.3 under Sec.83
 of the Maharashtra Cooperative)
 Societies Act, 1960,)
 Adult, Occ: Advocate,)
 Residing at Building No.14,)
 B-19, 5th Floor, Near Race)
 Course, Government Colony,)
 Hajiali, Mumbai 400 034.)
7. The Secondary School Employees)
 Cooperative Credit Society Ltd.)
 A Society registered under)
 the provisions of the Maharashtra)
 Cooperative Societies Act, 1960)
 having its office at Naigaon,)
 Mumbai 400 014.)
8. Shri J.R.Patil,)
 Sethi Chawl, Hemant Niwas,)
 Room No.12, Kajupada Pipe Line,)
 Jarimari Shivsena Office,)
 Kurla, Mumbai.)

9. D.Y.Mahadik,)
Aashirwad A.B.C. Co-operative)
Housing Society, Amrut Nagar,)
Ghatkopar (W), Mumbai.)
10. R.S.Singh,)
8/8, madhuri Apartments,)
Kathe Manewali, Kalyan (W),)
District Thane.)
11. Shri Parameshwar P. Shinde,)
1/11, pariwar Society,)
Shivkripa Nagar, Kanbjur Village))
Bhandup (E), Mumbai.)
12. Shri A.D.Gaikwad,)
A-7, Municipal Asflt Chawl,)
S.K.Ahir Marg, Worli,)
Near Satyam Cinema, Mumbai.)
13. Shri A.S.Sutar,)
19/465, Sector No.7, Antop)
Hill, Mumbai.)
14. Baliram Ramdas Patil,)
Om Co-operative Housing)

- Society Ltd. "D" Wing,)
 Room No.12, Devi Chowk,)
 Shastri nagar, Dombivali (W),)
 District Thane.)
15. Shri Manohar Mahadev Jangam)
 Jangam Chawl, Chougule Wadi,)
 Chinchpada, Asara Cross Lane,)
 Borivali (e), Mumbai 400 066.)
16. Shri Ganpat Bhiku Kharat,)
 Samata Building No.3, 1st floor,))
 Room No.6, T.S.G.P. Colony,)
 Poonam Nagar, Mahakali Road,)
 Andheri (E), Mumbai 400 093.)
17. Shri Vasant Ramchandra Paradhi)
 85/2371, Kannamwar nagar No.2,)
 Vikhroli (E), Mumbai 400 079.)
18. Shri Niranjan Babulal Rawal,)
 Indu Society, flat No. C-2,)
 Sector 14, Vashi, Navi Mumbai.)
19. Sau. Asha R. Ketkar)
 A-4, Konark Apartment,)
 Chheda Marg, Nalasopara,)

District Thane 401 203.

)..Respondents

Mr.R.S.Datar for the petitioner.

Mr. A.S.Desai for Respondents Nos. 7 to 18

Mr. Milind More, AGP, for the State.

CORAM: S.K.SHAH, J.

DATE : 22nd September, 2005.

ORAL JUDGMENT :

1. Heard Counsel on both sides.

2. This petition is directed against the order dated 28.12.2001 passed by the Respondent No.2, the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai, in Revision Application No. 146 of 2000 confirming the finding recorded by the Respondent No.6 in his Report dated 12.1.2000 submitted by the Respondent No.6 under the provisions of Section 83 of the Maharashtra co-operative Societies Act, 1960 (for short, "the Act") and seeking a direction to the Respondent No.1 to appoint a fit and proper person as the Inquiry Officer for inquiring into the transaction of purchase of premises at Jogeshwari by Respondent No.7 -

Society.

3. The Respondent No.7 - Society is registered under the Maharashtra Co-operative Societies Act, 1960. The Society is of Secondary School Teachers working in Mumbai. There are around 13000 members of the Society. The object of the Society is to provide facility to its members. The petitioner was a member of the Society. He was subsequently expelled from the membership of the Society.

4. The petitioner has filed a complaint to the Deputy Registrar of Co-operative Societies alleging that the Society had purchased the premises at Jogeshwari at the price of Rs.58 lakhs and other properties with which we are not concerned here. Under the provisions of Section 88(1) of the Act, Inquiry was directed to be conducted by the Inquiry Officer who submitted his report dated 6.9.1998 wherein he held that the Respondents Nos. 8 to 19 have caused loss to the Society to the tune of Rs.21,66,000/- and directed the Respondents Nos. 8 to 19 to pay the amount. The Respondents Nos. 8 to 19 have appealed before the Respondent No.2 challenging the aforesaid order. The Respondent No.2 initially refused to grant stay to the said order and, therefore, the Respondents Nos. 8 to 19 filed

Revision before the Respondent No.4. The said Revision Application was allowed against which the petitioner filed Writ Petition No.886 of 1999 in this Court challenging the order of Respondent No.4 whereby the operation of the order dated 16.9.1998 was stayed pending the Appeal. This Court directed Respondent No.2 to hear and decide the Appeal within a period of four weeks. The Appeal was finally decided and the order dated 16.9.1998 was set aside against which the petitioner filed Revision Application before the Respondent No.4 challenging the order. The Respondent No.1 issued notice to Respondents Nos. 8 to 19 calling upon them to pay the amount under the Award. The Respondent No.1 also issued show cause notices to the Respondents Nos. 8 to 19 to show cause as to why they should not be held as disqualified to act as members of the Managing Committee of Respondent No.7 - Society. It is against that order that Respondents Nos. 8 to 19 filed Writ Petition No. 2014 of 1999 in this Court. This Court set aside the said order dated 23.7.1999 and expedited the hearing of the Revision Application. The Respondent No.4 while dealing with the Revision Application directed the Respondent No.2 to issue an order under Section 83 of the Act for investigating into the transaction of purchase of premises by the Respondent No.7 - Society at Jogeshwari, Mumbai. The said order was challenged in

this Court by preferring Writ Petition No. 2984 of 1999. In the said Petition, this Court directed Respondent No.1 to hold and complete the inquiry within a period of one month. This Court appointed Respondent No.6 as Inquiry Officer who submitted the report on 12.1.2000 recording the finding that the Society had not suffered any loss in the transaction of purchase of the premises at Jogeshwari. The petitioner therefore preferred Revision Application challenging the said report of the Inquiry Officer. The said Revision Application was rejected. Hence, the present Writ Petition is filed.

5. The short question that was required to be considered by the Inquiry Officer appointed under Section 83 of the Act was whether the price at which the Jogeshwari property was purchased by the Society was much more than the market value then prevailing and, consequently, whether any loss was caused to the Society.

6. The Respondent No.7 Society had purchased two flats bearing Nos. 101 and 102 in the building known as "Noor Mahal" situated at S.V.Road, Opp. Farukh High School, Jogeshwari (West), Mumbai 400 102 for consideration of Rs.58 lakhs on 20th April, 1996. The complaint that was made by the petitioner was that

around seven months earlier to this transaction the vendor of these flats had purchased the said flats for Rs.37.50 lakhs only.

7. The Inquiry Officer has given reasons for holding that no loss was caused to the Society. He had taken into consideration the aspect of purchase at Rs.37.50 lakhs just seven months prior to the impugned purchase. The reason assigned by him for overcoming this position was that only on this basis no inference can be drawn that the Society paid more than the market rate. The second point that the Inquiry Officer had taken into consideration was that the Registered Valuer had assessed the market value of these flats at Rs.58 lakhs. The third point the Inquiry Officer has taken into consideration is the chart prepared by the Collector of Bombay for the purpose of valuation of property in various areas in Mumbai. This chart indicates that the prices of commercial premises were Rs.7000 to Rs.8000 per sq. ft. and for residential premises were at Rs.5,500/- per sq. ft. whereas the Society had purchased at the rate of Rs.3,900/- per sq. ft.

8. These findings of the Inquiry Officer are assailed on behalf of the petitioner stating therein that the reasons assigned by the Inquiry Officer are not proper. Brushing aside the earlier transaction at

Rs.37.50 lakhs for the reason that the same cannot be the basis for drawing an inference that the Society has paid more amount than the market rate is totally perverse. The learned Counsel for the Petitioner submits that in fact the Inquiry Officer should have collected information in respect of the market prices. Therefore, the learned Counsel for the petitioner submits that the market value arrived at by the Inquiry Officer is not proper.

9. The learned Counsel for the Respondents Nos. 7 to 19 submits that the Inquiry Officer had checked the record of the Society. He had also taken into consideration the valuation report submitted by the registered valuer and had also taken into consideration the position of chart prepared by the Collector for the purpose of levying stamp duty and held that the aforesaid conclusion is proper and therefore the same cannot be disturbed.

10. The carpet area of the two flats purchased was 500 sq. ft. per flat i.e. totally 1000 sq. ft. The price paid was Rs.3,900/- per sq. ft. not for the carpet area, but for the saleable built-up area. The question is whether the inquiry was properly made or not. It is clear that the reasoning adopted by the Inquiry Officer for the Society's previous transaction

for purchase of flats at Rs.37.50 lakhs was totally improper. He should have tried to ascertain as to why the price of these flats was only Rs.37.50 lakhs just seven months prior and how it had gone upto Rs.58 lakhs. Another aspect of taking into consideration is the chart prepared for the purpose of assessing stamp duty cannot be said to be the basis for arriving at the market value of the flats in question. It therefore appears that the Inquiry Officer had mainly relied upon the report of the registered valuer. It is pertinent to note that this report was obtained by the Society itself on 18.3.1996 before the flats were purchased on 20.4.1996. This indicates that even the members of the Society did not try to ascertain the exact market value of the flats before purchase. When there is a deal for purchase of immovable property, an enquiry is made by the purchaser whether he is paying proper price or not and that enquiry could not be only to get report from the registered valuer, but enquiry must be with regard to the actual transaction of sale and purchase. 11. Rule 71 of the Maharashtra Co-operative Societies Rules, 1961 sets out the procedure and principles for the conduct of inquiry and inspection as required to be done under Section 83 of the Act. As per clause (4) of Rule 71, the Inquiry Officer is required to obtain such information or explanation from any such officers, members, agents or

servants of the Society in regard to the transactions and working of the society as he deems necessary for the conduct of such inquiry or inspection. In the present case, the Inquiry Officer has inspected the accounts of the Society. Merely inspecting accounts of the Society will in no way help the Inquiry Officer to decide whether the price paid by the Society for purchase of the two flats was proper or improper. He did not call upon either the petitioner or the other members of the Society to furnish information in this regard nor he himself collected any information as to the real market price of the society. He appears to have relied upon the valuer's report which was obtained for the very purpose of making purchase. He did not enquire as to how the price could rise from Rs.37.50 lakhs to Rs.58 lakhs of same property within a matter of 7 months which was the main complaint and which arouse suspicion about the genuineness of the transaction. This was obviously improper and illegal. Under the circumstances, the Inquiry Report is vitiated and cannot be accepted.

12. Under the circumstances, the Petition is allowed in terms of prayer clauses 13(a)(i), (ii) & (iii).

13. The Respondent No.1 shall appoint a fit and proper person as Inquiry Officer for investigating

into the transaction of purchase of property at Jogeshwari by the Respondent No.7 Society within four weeks from the receipt of copy of this order requiring the Inquiry Officer to complete the inquiry expeditiously.

(S.K.SHAH, J.)